

PATENT

Atty Docket No.: 10013958-1

App. Ser. No.: 09/931,034

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the claim amendments and following remarks. By virtue of the amendment, claims 1-5, 7-18 and 20-22 are pending in the present application of which claims 1, 12, 16, 18 and 21-22 are independent. No new matter has been added.

Claims 5, 10, 12, 17 ad 20 were rejected under 35 U.S.C. § 112, second paragraph for having insufficient antecedent basis.

Claims 18 and 20 were rejected under 35 U.S.C. § 102(e) as being anticipated by Garfinkel et al., USPN 6,157,298 (hereinafter referred to as Garfinkel).

Claims 1, 2, 8-17 and 21-22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Garfinkel in view of Penza, USPN 5,823,557.

Claims 3-7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Garfinkel in view of Penza, and further in view of Fry, USPN 6,463,385.

Claim 19 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Garfinkel.

These rejections are traversed for the reasons set forth below.

Claim Rejection under 35 U.S.C. § 112

Claims 5, 10, 12, 17 ad 20 were rejected under 35 U.S.C. § 112, second paragraph for having insufficient antecedent basis. These claims have been amended to provide antecedent basis for features previously lacking antecedent basis. Accordingly, the rejections of claims 5, 10, 12, 17 ad 20 are overcome.

PATENT

Atty Docket No.: 10013958-1

App. Scr. No.: 09/931,034

Claim Rejection under 35 U.S.C. § 102

The test for determining if a reference anticipates a claim, for purposes of a rejection under 35 U.S.C. § 102, is whether the reference discloses all the elements of the claimed combination, or the mechanical equivalents thereof functioning in substantially the same way to produce substantially the same results. As noted by the Court of Appeals for the Federal Circuit in *Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984), in evaluating the sufficiency of an anticipation rejection under 35 U.S.C. § 102, the Court stated:

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.

Therefore, if the cited reference does not disclose each and every element of the claimed invention, then the cited reference fails to anticipate the claimed invention and, thus, the claimed invention is distinguishable over the cited reference.

The Office Action sets forth a rejection of claims 18 and 20 under 35 USC 102 (e) as allegedly being anticipated by Garfinkel.

Claim 18 recites, "wherein the housing is positioned about a front portion of the helmet." Garfinkel discloses a compartment housing an electronics module situated along the rear portion of an outer shell. Garfinkel states, "Naturally, the rear portion of the outer shell 11 is larger than the front portion to accommodate the electronics module." See column 5, lines 3-6.

In contrast, claim 18 recites the housing is positioned about a front portion of the helmet. This feature is not taught by Garfinkel, and Garfinkel teaches away from positioning a housing in the front portion of the helmet. According to an embodiment described in the Applicants' specification, the housing 52 is adapted to be placed on the front end of the

PATENT

Atty Docket No.: 10013958-1

App. Ser. No.: 09/931,034

helmet to reduce the distance of the wireless link between the housing a transceiver of the vehicle subsystem positioned on the cycles handles. See p. 8, lines 21-25.

In addition Garfinkel fails to teach the features of dependent claim 20. Claim 20 recites that "wherein the one or more speakers are positioned near a user's ears without the one or more speakers covering the user's ears." Garfinkel fails to teach one or more speakers near a user's ears but not covering the user's ears. As shown in figures 1 and 2 of Garfinkel, the speakers cover the user's ear. For at least these reasons claims 18 and 20 are believed to be allowable.

Claim Rejection under 35 U.S.C. § 103

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in MPEP § 706.02(j):

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Therefore, if the above-identified criteria are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

1. Claims 1, 2, 8-17 and 21-22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Garfinkel in view of Penza, USPN 5,823,557.

PATENT

Atty Docket No.: 10013958-1

App. Ser. No.: 09/931,034

Claim 1 has been amended to recite the features of claim 6, which is canceled herein.

Claim 1 recites, "wherein the at least one port includes two ports, and the system further comprises a cellular phone positionable in one of the two ports, the cellular phone providing a phone audio signal to the mounting device."

According to an embodiment described in the Applicants' specification, a housing may include ports housing a cell phone and GPS. The ports in the housing may include a protective enclosure that may be opened and closed and protecting the cell phone and GPS from moisture or excessive sunlight. See p. 10, lines 1-11.

As acknowledged in the office action on p.9, neither Garfinkel nor Penza teach or suggest two ports. However, the office action, with respect to claim 6, alleges Fry teaches a cellular phone in a port. The rejection of claim 6 alleges Fry discloses two ports, such as the port 230 shown in figure 2 in Fry. Claim 1 recites a cellular phone positionable in a port. The port 230 of Garfinkel does not house a cellular phone or any device and a cellular phone cannot be positioned in the port 230. Instead the port 230 appears to be a connector for connecting a PC to download information to the PC. See column 5, lines 33-39.

Accordingly, none of the cited references teach or suggest all the features of claim 1.

Independent claim 12 recites, "two speaker ear cones positioned on the helmet, the two speaker ear cones connected with the processor for creating an audible audio signal from the analog audio signal, wherein the two speaker cones do not cover a user's ears and are positioned substantially perpendicular to the user's ears."

None of the cited references teach or suggest two speaker ear cones. Claim 12 also recites that the two speaker cones do not cover a user's ears and are positioned substantially perpendicular to the user's ears. None of the cited references teach or suggest these features.

PATENT

Atty Docket No.: 10013958-1

App. Ser. No.: 09/931,034

Garfinkel discloses an ear assembly 24 that is parallel to the user's ear and covers the ear so the user's ear is substantially blocked from hearing noises from other than the ear assembly. According to an embodiment in the Applicants' specification, the user's ears are not covered by the speaker cone so the user can hear other sounds, such as traffic sounds, during operation. Figures 4A-B and 5 disclose the substantially perpendicular positioning of the speaker cones to the user's ears. Also, it would not have been obvious to position the ear assembly 24 of Garfinkel because Garfinkel only discloses one ear assembly, so the other ear is left uncovered to hear other sounds.

Independent claim 16 recites, "wherein the one or more speaker cones do not cover a user's ears." None of the cited references teach or suggest these features. Garfinkel discloses an ear assembly 24 that is parallel to the user's ear and covers the ear so the user's ear is substantially blocked from hearing noises from other than the ear assembly.

Independent claim 21 recites, "wherein the one or more speaker cones do not cover a user's ears and are positioned substantially perpendicular to the user's ears." Independent claim 22 recites, "wherein the one or more speaker cones do not cover a user's ears and are positioned substantially perpendicular to the user's ears." None of the cited references teach or suggest these features as stated above.

For at least these reasons, claims 1-5, 7-17, and 21-22 are believed to be allowable.

2. Claims 3-7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Garfinkel in view of Penza, and further in view of Fry, USPN 6,463,385.

Claim 6 is canceled herein and the features of claim 6 are combined with claim 1.

Claims 3-5 and 7 are believed to be allowable for at least the reasons claim 1 is believed to be

PATENT

Atty Docket No.: 10013958-1

App. Ser. No.: 09/931,034

allowable. Also, claim 3 recites, "a GPS receiver positionable in one of the two ports, the GPS receiver providing position data." Fry was combined with Garfinkel in view of Penza to teach a GPS receiver in a port. However, the GPS receiver 210 of Fry is not in a port. Instead, the GPS receiver appears to be embedded in the housing 104.

3. Claim 19 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Garfinkel. The features of claim 19 have been combined with independent claim 18, and claim 19 is canceled herein.

As stated above with respect to claim 18 recites, "wherein the housing is positioned about a front portion of the helmet." Garfinkel discloses a compartment housing an electronics module situated along the rear portion of an outer shell. Garfinkel states, "Naturally, the rear portion of the outer shell 11 is larger than the front portion to accommodate the electronics module." See column 5, lines 3-6.

In contrast, claim 18 recites the housing is positioned about a front portion of the helmet. This feature is not taught by Garfinkel, and Garfinkel teaches away from positioning a housing in the front portion of the helmet. According to an embodiment described in the Applicants' specification, the housing 52 is adapted to be placed on the front end of the helmet to reduce the distance of the wireless link between the housing a transceiver of the vehicle subsystem positioned on the cycles handles. See p. 8, lines 21-25.

Furthermore, it would not have been obvious to modify Garfinkel to provide the electronics module in a housing in the front portion of the helmet, because Garfinkel teaches away from positioning the housing in the front portion of the helmet. Garfinkel states,

PATENT

Atty Docket No.: 10013958-1

App. Ser. No.: 09/931,034

"Naturally, the rear portion of the outer shell 11 is larger than the front portion to accommodate the electronics module."

Furthermore, the motivation to modify Garfinkel to position the electronics module in the front portion of the housing is improper. On page 11 of the office action, the rejection states, "One of ordinary skill in the art would have been lead to make such as modification if the helmet did not include a headlight" Garfinkel in fact does include a headlight assembly 27 in the front of the headlight, and thus it would not have been obvious to modify Garfinkel to position the electronics module in the front of the helmet because there is no space for the electronics module in the front of the helmet of Garfinkel. Garfinkel does not teach the light assembly can be moved or removed.

PATENT

Atty Docket No.: 10013958-1

App. Ser. No.: 09/931,034

Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

Respectfully submitted,

Dated: June 27, 2005

By



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